

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NICHOLAS M. MOSS,

Petitioner,

vs.

ROB JEFFREYS,

Respondent.

8:20CV474

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner's Motion for Status, [Filing No. 32](#), and Motion to Appoint Counsel, [Filing No. 33](#). Petitioner is advised that the merits of his habeas petition are fully submitted and are currently under consideration by the Court. The Court will issue a decision in due course.

Petitioner also seeks appointment of counsel arguing that appointment is appropriate as he is unable to pay for private counsel, and despite reasonable efforts he has otherwise been unable to obtain counsel. [Filing No. 33 at 1](#). “[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court.” [*McCall v. Benson*, 114 F.3d 754, 756 \(8th Cir. 1997\)](#). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner's ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. See, e.g., [*Morris v. Dormire*, 217 F.3d 556, 558–59 \(8th Cir. 2000\)](#), cert. denied, [531 U.S. 984 \(2000\)](#); [*Hoggard v. Purkett*, 29 F.3d 469, 471 \(8th Cir. 1994\)](#). See also Rule 8(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted).

The Court finds there is no need for the appointment of counsel at this time as Petitioner has proceeded through the briefing stage adequately presenting his claims, and as previously noted, the merits of his Petition are currently before the Court with no additional briefing necessary. However, to the extent Petitioner seeks an evidentiary hearing as relief, see [Filing No. 18 at 44](#), the Court shall abstain from deciding whether appointment of counsel is appropriate until the Court has ruled on the merits of the Petition.

IT IS THEREFORE ORDERED that:

Petitioner's Motion for Status, [Filing No. 32](#), is granted. Petitioner is advised that the merits of his habeas Petition are fully submitted and under consideration by the Court. The Court will issue a decision in due course and address Petitioner's pending motion for the appointment of counsel, [Filing No. 33](#), at that time.

Dated this 26th day of May, 2023.

BY THE COURT:



Joseph F. Bataillon
Senior United States District Court